IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 04.01.2007

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

WRIT PETITION Nos.21633 to 21638,

23469, 24831 of 2001 and 640 of 2002

Munavar Basha .. Petitioner in W.P.Nos.21633 to 21635 and 21638/2001

Evershine Monuments
rep by its Managing Partner
MR. Munavar basha .. Petitioner in W.P.21636/01

Gazhanfar Basha ... Petitioner in W.P.21637/01

G.B. Enterprises,
rep by its Partner
Ghazanfar Basha ... Petitioner in W.P.23469/01

Karthik Granites Pvt. Ltd.,
Rep by its Director
Mrs. T. Jayanthi ... Petitioner in W.P.24831/01

Premium Granites Ltd.,
Rep by its General Manager,
L.V. Ramanathan ... Petitioner in W.P.640/02

-Vs-

The District Collector
Thiruvannamalai District
Thiruvannamalai. ..Respondents in W.P.Nos.21633 to 21638/01

The Assistant Director of
Geology & Mining
O/o. The District
Collector of Salem
Salem. ... Respondent in W.P.Nos.23469/01, 24831/2001

The District Collector,
Vellore District, Vellore. ... Respondent in W.P.Nos.640/02

Writ petitions filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari as stated

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therein.

For Petitioners :Mr.K.Ramakrishna Reddy

For Respondents :Mr.R.Thirugnanam,SGP

C O M M O N O R D E R

W.P.No.21633 of 2001 is filed for the issuance of a writ of certiorari to call for the records of the respondent's proceedings bearing S.R.No.24/Kanimam/97 dated 10.09.2000 pertaining to granite quarry lands measuring 2-04-0 Hectares, comprised in S.No.10/2, Mekkalur Village, Tiruvannamalai Taluk, Tiruvannamalai District and quash the same.

2. W.P.No.21634 of 2001 is filed the issuance of a writ of certiorari to call for the records of the respondent's proceedings bearing S.R.No.22/Kanimam/97 dated 10.09.2000 pertaining to granite quarry lands measuring 0.97.3 Hectares, comprised in S.No.37, situated in Mekkalur Village, Tiruvannamalai Taluk, Tiruvannamalai District and quash the same.

3. W.P.No.21635 of 2001 is filed for the issuance of a writ of certiorari to call for the records of the respondent's proceedings bearing S.R.No.23/Kanimam/97 dated 10.09.2000 pertaining to granite quarry lands measuring 4-00-0 Hectares, comprised in S.No.16, situated in Mekkalur Village, Tiruvannamalai Taluk, Tiruvannamalai District and quash the same.

4. W.P.No.21636 of 2001 is filed for the issuance of a writ of certiorari to call for the records of the respondent's proceedings bearing S.R.No.33/Kanimam/97 dated 10.09.2000 pertaining to granite quarry lands measuring 2.04.5 Hectares, comprised in S.No.59, situated in Mekkalur Village, Tiruvannamalai Taluk, Tiruvannamalai District and quash the same.

5. W.P.No.21637 of 2001 is filed for the issuance of a writ of certiorari to call for the records of the respondent's proceedings bearing S.R.No.21/Kanimam/97 dated 10.09.2000 pertaining to granite quarry lands measuring 5.70 acres, comprised in S.No.176, situated in Kothandavadi Village, Tiruvannamalai Taluk, Tiruvannamalai District and quash the same.

6. W.P.No.21638 of 2001 is filed for the issuance of a writ of certiorari to call for the records of the respondent's proceedings bearing S.R.No.32/Kanimam/97 dated 10.09.2000 pertaining to granite quarry lands measuring 1-74-5 Hectares, comprised in S.No.7/1, situated in Mekkalur Village, Tiruvannamalai Taluk, Tiruvannamalai District and quash the same.

7. W.P.No.23469 of 2001 is filed for the issuance of a writ of certiorari to call for the records of the respondent's demands bearing Roc.1347/2001/Mines-B dated 22.10.2001 and Roc.1442/2000/Mines-B, dated 20.11.2001 pertaining to granite quarry

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lands measuring 1-87-0 Hectares, comprised in S.No.203/3, situated in Navapatty Village, Mettur Taluk, Salem District and quash the same.

8. W.P.No.24831 of 2001 is filed for the issuance of a writ of certiorari to call for the records of the respondent's demand bearing Roc.526/97/Mines-B dated 03.12.2001 pertaining to granite quarry lands situatd in Thalaisolai Village, Salem District and quash the same.

9. W.P.No.640 of 2002 is filed for the issuance of a writ of certiorari to call for the records of the respondent's proceedings bearing Rc.B.49/2000 (Mines) dated 16.07.2001 and all further proceedings therein pertaining to two granite quarrying lands measuring 1-54-5 Hec. Comprised in S.No.355/1A, situated in Gudalur Village and the quarry lands measuring 4-40-5 Hectares comprised in S.No.381/2, situated in Ayyapedu Village Arkonam Taluk, Vellore District (formerly North Arcot Ambedkar District) and quash the same.

10. As the facts in all the cases are identical and the prayer in all the writ petitions as well as the challenge and the grounds of challenge are one and the same, all the writ petitions are taken up together for disposal. The facts in W.P.No.21633 of 2001 is taken as a typical case.

11. The petitioner obtained a quarry lease in respect of Government land measuring 2.04.0 hectares comprised in S.No.10/2 situated in Mekkalur Village, Tiruvannamalai Taluk, Tiruvannamalai District for a period of 5 years from 03.05.1988 to 02.05.1993 and executed lease deed containing various terms and conditions binding the parties for quarrying of granite and payment thereof during the relevant period of time. It is the case of the petitioner that though the lease was granted and lease deed was executed, the quarry could not be operated as the granite deposit available in the quarry was not of marketable quality. The quarry was abandoned. It is the further case of the petitioner that the respondent by proceedings dated 10.09.2000 has levied and demanded interest at the rate of 24% on the belated payment of local cess and local cess surcharge and also area assessment and dead rent totalling a sum of Rs.73,900/-. The said demand issued in the year 2000 is put in issue by the petitioner in this writ petition.

12. So far as the demand of interest on local cess and local cess surcharge, according to the petitioner, the issue is settled by the Judgment of the Supreme Court in the case of DISTRICT MINING OFFICER VS. TATA IRON AND STEEL COMPANY reported in 2001 (7) SCC 358 in favour of the petitioner.

13. In respect of the other demand, the area assessment in a sum of Rs.586/- and Dead Rent in a sum of Rs.30,538/-, it is the case of the petitioner that though the lease has been granted and lease deed has been executed for a period of 5 yeas from 03.05.1988

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to 02.05.1993, no quarrying operation has been carried out by the petitioner and quarry was lying barren. As per Sec.4-A(4) of the Mines and Minerals (Regulation and Development) Act, 1957, if the lessee has not operated the quarry for a period of one year, the lease granted in favour of the petitioner would automatically be lapsed. After the quarry lease is lapsed, there is no question of demand of dead rent and area assessment in respect of the said quarry. Hence the impugned order in respect of demand of area assessment in a sum of Rs.486/-, dead rent in a sum of Rs.30,538/- is not legally sustainable and liable to be set aside.

14. Mr.Ramakrishna Reddy, learned counsel appearing for the petitioners, in elaboration of the contention, submitted that as per Section 4A(4) of the Mines and Minerals (Regulation and Development) Act, 1957, if the quarry is not operated for a period of one year from the date of execution of the lease deed, the lease granted in favour of the petitioner is lapsed automatically and thereupon there exist no lessor and lessee relationship. In the absence of any such relationship, the respondents cannot legally demand area assessment and dead rent. He further contended that the stand taken by the respondent in their counter that the petitioners did not inform about the non operation of the quarry or surrendered the quarry back to the Government cannot be legally sustainable when the statute itself provides for automatic lapse if the quarry is not operated for a period of one year from the date of lease deed, and particularly in the absence of any obligation cast upon by way of statutory provision to inform the respondent about the non-quarrying operation by the petitioners.

15. On the other hand, the learned Special Government Pleader appearing for the respondents submitted that under Clause 4 and Clause 5(1) of the lease deed executed by the petitioner, the petitioner agreed to pay seigniorage fee or dead rent whichever is higher apart from area assessment. Having entered into a statutory agreement, the petitioner cannot wriggle out and contend that he is not liable to pay dead rent and area assessment on the premise that quarrying activity has not been carried out. Admittedly no termination order was passed by the respondents. Hence the quarry lease granted in favour of the petitioners cannot be treated as terminated. The provision contained in Sec.4A(4) of the Mines and Minerals (Regulation and Development) Act, 1957, could not be regarded as termination of lease as contended by the petitioner, because the provisos thereto provide for revival of the quarry at the instance of the lessee. However, in respect of local cess and local cess surcharge, learned Special Government Pleader conceded that the issue has been settled by the Supreme Court.

16. I heard the argument of the learned counsel for the parties and perused the material and also the statutory provision.

17. The dispute of levy of local cess and local cess surcharge on minerals has been now well settled by the Supreme Court in the case of DISTRICT MINING OFFICER VS. TATA IRON AND STEEL COMPANY reported in 2001(7) SCC 358. In the impugned order, a sum of

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Rs.42,776/- is demanded towards local cess and local cess surcharge which included interest at the rate of 24% from 22.6.1994. As per the judgment of the Supreme Court reported in 2001(7) SCC 358, the respondent cannot levy local cess and local cess surcharge subsequent to the date of 4.4.1991 upto which date the levy had been validated by Validation Act. Thus, the interest demanded from 22.6.1994 cannot be legally sustainable and to that extent the demand is quashed.

18. Now, let me consider the other contention that the demand of dead rent and area assessment is bad inasmuch as under Section 4A (4), the lease granted is automatically lapsed, if the quarry is not operated for a period of one year from the date of execution of lease deed.

19. Section 4A(4) of the Mines and Minerals (Regulation and Development) Act, 1957 provides as follows:-

> "(4)...Where the holder of a mining lease fails to undertake mining operations for a period of one year (now amended as two years)after the date of execution of the lease or having commenced mining operations, has discontinued the same for a period of one year (now amended as two years), the lease shall lapse on the expiry of the period of one year (now amended as two years) from the date of execution of the lease or, as the case may be, discontinuance of the mining operations:
>
> Provided that the State Government may, on an application made by the holder of such lease before its expiry under this sub-section and on being satisfied that it will not be possible for the holder of the lease to undertake mining operations or to continue such operations for reasons beyond his control, make an order, subject to such conditions as may be prescribed, to the effect that such lease shall not lapse:
>
> Provided further that the State Government may, on an application by the holder of a lease submitted within a period of six months from the date of its lapse and on being satisfied that such non-commencement or discontinuance was due to reasons beyond the control of the holder of the lease, revive the lease from such prospective or retrospective date as it thinks fit but not earlier than the date of lapse of the lease:
>
> Provided also that no lease shall be revived under the second proviso for more than twice during the entire period of the lease."

20. From the reading of the above provision, the conspectus of the same could be deduced as follows:

(1) Where the holder of a mining lease failed to undertake

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mining operation for a period of one year (prior to amendment by Act 25 of 1994), the lease shall be lapsed on the expiry of period of one year from the date of execution of the lease;

(2) Where the holder of the mining lease having commenced the mining operation had discontinued the same for a period of one year, the lease shall be lapsed on the expiry of the period of one year from the date of discontinuance;

(3) After expiry of the period aforesaid, the holder of the mining lease could not operate the quarry;

(4) The holder of the mining lease, who failed to undertake the mining operation, within the aforesaid period of one year, could make an application to the State Government giving reasons for his failure to commence the quarry operation for passing orders to the effect that the lease shall not be lapsed;

(5) The holder of the mining lease, who having commenced mining operation, discontinued the same, within the period of one year from the discontinuance could make an application giving reasons therefor to the Government for passing orders to the effect that lessee shall not be lapsed;

(6) The State Government on being satisfied that it would not be possible for the holder of the lease to undertake the mining operation or to continue such operation for the reasons beyond his control could make an order subject to such condition to the effect that the lease shall not be lapsed;

(7) The holder of the lease, within a period of six months from the date of its lapse, on either count i.e., failure to undertake the mining operation or having commenced the mining operation discontinued the same for a period of one year could make an application by giving reasons therefor to the State Government to pass an order to revive the same;

(8) The State Government on being satisfied that such non-commencement or discontinuance was due to the reasons beyond the control of the holder of the lease, revive the lease from such prospective or retrospective date, but not earlier than the date of lapse of the lease; and

(9) No lease could be revived under the second proviso for more than twice during the entire period of the lease.

21.The term "lapse of lease" has not been defined either in Mines and Minerals (Development and Regulation) Act,1957 or in the Tamilnadu Minor Mineral Concession Rules, 1959.

In Wharton's Law Lexicon, 14th Edition, the word "Lapse" has been defined as "error; failing in duty".

In Shroud's Judicial Dictionary of Words and Phrases, Volume II, 3rd Edition, the word "lapse" has been defined as "an apt expression for the loss of any interest in land by reason of an omission to renew, or the non-performance of a condition such as the payment of money (O.Keefe v. Malone, (1903) A.C. 365, cited FORFEITURE)".

In Black's Law Dictionary, Eighth Edition, the word "lapse" has been defined as "lapse, n. The termination of a right or privilege because of a failure to exercise it within some time limit or because a contingency has occurred or not occurred."

In Corpus Juris Secundum Volume LII, the word "Lapse" has been

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defined as "used as a noun it means a failure; the termination or failure of a right or privilege through neglect to exercise it within some limit of time, or through some failure or contingency." It further states that "as used in a statute with reference to the operation of crown lands under a license, an apt expression for the loss of any interest in land by reason of an omission to renew, or the non-performance of a condition, such as the payment of money; It has been held synonymous with "fail" and failure."

22. From the above definition, it is obvious that on the failure of the holder of the mining lease, in not commencing the quarry operation, or having commenced, has discontinued the quarrying operation, the holder of mining lease loses his interest in the land for carrying out the mining operation alone. The holder of the mining lease loses only his right and interest in the land for carrying on the quarrying activity without getting an order far non-lapsing or revival of the right to quarry. It is evident from the two provisos to Section 4A(4) which provide for and save the interest of the leaseholder to get an order for revival of the lease.

23. The said position will be more clear if clauses (1) to (3) of Section 4-A are read in conjunction with clause (4), which is the fundamental rule of interpretation. Clause (1) of Section 4-A of Mines and Minerals (Development and Regulation) Act, 1957 speaks about the power of the Central Government for making premature termination of prospecting licence or mining lease in respect of any mineral other than minor mineral. Clause (2) provides for premature termination of mining lease by the State Government in respect of minor minerals. Clause (3) provides for giving a reasonable opportunity to the holder of mining lease before making an order of premature termination. Clause (4) provides for lapse. There is a marked distinction in the language employed in clause (2) and Clause (4). Clause (2) speaks about termination of lease, whereas clause (4) speaks about lapsing of lease in certain circumstances. If it is the intention of the Legislature on the happening of the event stated in sub-clause (4) of section 4A the relationship of the lessor and lessee is snapped, they would have specifically stated that the lease is terminated.

24. Rule 36-E of the Rules provides for refund of lease amount in case where the State Government have made premature termination of a quarrying lease or permit under the provisions of sub-section (2) of Section 4-A of the Act. Sub-clause 11 of Clause 6 in the lease deed provides for termination of lease in respect of whole or any part of the premises by six months notice in writing on either side. It further provided that on such termination, the lessee shall have no right of compensation of any kind.

25. From the above statutory provisions, it could be safely concluded that under Section 4-A(4), if the quarry is not operated for a period of one year from the date of lease deed, the right of the petitioner to quarry the mineral is only lapsed and the lease granted in favour of the petitioner is not terminated. Thus, the

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contention contra raised by the petitioner is rejected.

26. Now, let me consider the meaning and significance of the expression "dead rent". Whartons Law Lexicon, 14th Edn., at page 300 defines dead rent as "a rent payable on a mining lease in addition to a royalty, so called because it is payable whether the mine is being worked or not."

The definition of dead rent given in Blacks Law Dictionary, 5th Edition at page 359, is "In English law, a rent payable on a mining lease in addition to a royalty, so called because it is payable although the mine may not be worked".

Jowitts Dictionary of English Law, 2nd Edition, at page 555, defined dead rent as "a term sometimes used in mining leases in contradistinction to a royalty, to denote a fixed rent to be paid whether the mine is productive or not." The same dictionary states under the heading Rent, at page 1544 as follows:

> "When a mine, quarry, brickworks, or similar property is leased, the lessor usually reserves not only a fixed yearly rent but also a royalty or galeage rent, consisting of royalties (q.v.) varying with the quantity of minerals, bricks, etc., produced during each year. In this case the fixed rent is called a dead rent."

The topics of dead rent and royalties are dealt with in Halsburys Laws of England Fourth Edition in volume 31 under the sub-heading Consideration, the main heading being Property demised; Consideration. Para 335 at page 241 deals with "dead rent" and para 336 with royalties. The relevant passages are as follows:

> "335. Dead rent. It is usual in mining leases to reserve both a fixed annual rent (otherwise known as a dead rent, minimum rent or certain rent) and royalties varying with the amount of minerals worked. The object of the fixed rent is to ensure that the lessee will work the mine; but it is sometimes ineffective for that purpose. Another function of the fixed rent is to ensure a definite minimum income to the lessor in respect of the demise.
>
> If a fixed rent is reserved, it is payable until the expiration of the term even though the mine is not worked, or is exhausted during the currency of the term, or is not worth working, or is difficult or unprofitable to work owing to faults or accidents, or even if the demised seam proves to be non-existent.
>
> Where a fixed rent is reserved to commence from the time when a certain quantity of minerals has been got and the lessee covenants to get that quantity without delay, the commencement of the payment will not be delayed should the lessee fraudulently fail to complete the getting of the quantity."

27. In a mining lease the consideration usually moving from the lessee to the lessor is the rent for the area leased (often called

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surface rent), dead rent and royalty/seigniorage fee. Since the mining lease confers upon the lessee the right not merely to enjoy the property as under an ordinary lease but also to extract minerals from the land and to appropriate them for his own use or benefit, in addition to the usual rent for the area demised, the lessee is required to pay a certain amount in respect of the minerals extracted proportionate to the quantity so extracted. Such payment is called royalty or seigniorage fee. It may, however, be that the mine is not worked properly so as not to yield enough return to the lessor in the shape of seigniorage fee. In order to ensure for the lessor a regular income, whether the mine is worked or not, a fixed amount is provided to be paid to him by the lessee. This is called dead rent. Dead rent is calculated on the basis of the area leased while seigniorage fee is calculated on the quantity of minerals extracted or removed. Thus, while dead rent is a fixed return to the lessor, the seigniorage fee is a return which varies with the quantity of minerals extracted or removed. Since dead rent and seigniorage fee are both a return to the lessor in respect of the area leased, looked at from one point of view dead rent can be described as the minimum guaranteed amount of royalty payable to the lessor but calculated on the basis of the area leased and not on the quantity of minerals extracted or removed.

28. Clause 6 of Rule 8-A of Tamil Nadu Minor Mineral Concession Rules, 1959, which is relevant for this case provides for payment rents which reads as follows:

> "(6) The lessee besides the lease amount shall pay seigniorage fee or dead rent, which is more in respect of the actual quantity of the mineral removed or consumed at the rate prescribed from time to time in Appendix II to the Rules. Besides seigniorage fee or dead rent which ever is more, the lessee shall pay such other levies as may be prescribed by the Government from time to time."

29. Clause 5 of the statutory lease deed (Appendix I) provides for payment of various amounts such as land assessment, the cess and seigniorage on the minerals mined or dead rent, which ever is more and such other levies, which may be imposed by the Government from time to time. The other sub-clauses under clause 5 provide for payment of local cess, local cess surcharge and seigniorage fee per cubic metre. Under Clause 6, the lessee covenants to pay the assessment, seigniorage fee or dead rent on the days and in the manner provided in clause 5. Under Clause 7, the lessee agreed to pay the land assessment, seigniorage fee or dead rent, as reserved by the Government.

30. Agreeing all the aforesaid conditions, the lease deed has been executed by the petitioner. So, as per the conditions above referred to, the petitioner has to pay the seigniorage fee, and area assessment. In all these cases, as the petitioner has not removed any minerals by way of quarrying, there is no question of payment of

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seigniorage fee. Then, necessary corollary is that the petitioner has to pay the fixed rent i.e., dead rent till the expiry of the lease period or till the lease is duly terminated in accordance with the statutory provisions.

28. In view of the fore-going reasons, the writ petitions are partly allowed to the extent of demand of local cess and local cess surcharge and interest over it for period subsequent to 4.4.1991. In respect of payment of area assessment and dead rent, the writ petitions are dismissed. However, there is no order as to costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

rg/usk

To

1. The District Collector
Thiruvannamalai District
Thiruvannamalai.

2. The Assistant Director of
Geology & Mining
O/o. The District
Collector of Salem
Salem.

3. The District Collector,
Vellore District, Vellore.

9 ccs to the government Pleader, Sr. 1135 to 1137, 850, 851, 854, 858 to 860
9 ccs to Mr.K. Ramakrishna Reddy, Sr. 539, 541 to 543

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